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Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg
Cabinet Secretary for Economy, Energy and Welsh Language



Llywodraeth Cymru
Welsh Government

Mike Hedges MS
Chair of the Legislation, Justice and Constitution Committee
Senedd Cymru
Cardiff Bay
CF99 1SN

9 July 2024

Dear Mike,

I am writing in response to the Legislation, Justice and Constitution Committee's (LJCC) report on the 12 June in respect of the Energy Act 2023 (Consequential Amendments) Regulations 2024 (the Regulations).

The Regulations were laid before the UK Parliament on 13 May 2024. Standing Order 30A prescribes that a Statutory Instrument Consent Memorandum (SICM) must be laid and a Statutory Instrument Consent Motion may be tabled before Senedd Cymru if a UK Statutory Instrument makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd. On 14 May I laid a SICM in relation the Regulations before the Senedd in accordance with Standing Order 30A.

My intention was to hold a motion debate for the Senedd to consider the SICM laid on 14 May. However, as part of the expedited consideration of legislation by the UK Parliament due to the calling of the General Election, also known as 'wash-up', the Energy Act 2023 (Consequential Amendments) Regulations 2024 were debated and approved by both houses on Friday 24 May. It is regrettable that the expedited passage of the UKSI meant that it was approved without the opportunity for the Senedd to consider legislative consent.

Despite this, I would like to thank the Committee for their detailed consideration of the SICM. I have considered the conclusions set out in the report and have responded to the recommendation below.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Recommendation

Recommendation 1

The Welsh Government should clarify:

- its interpretation of “within the legislative competence of the Senedd” in Standing Order 30A”;
- how its interpretation of Standing Order 30A compares with its interpretation of “for any purpose within the legislative competence of the Senedd” in Standing Order 29;
- whether it believes changing the functions of a reserved authority without consent is within legislative competence for the purposes of Standing Order 30A;
- to what extent does it rely on the carve-out in Standing Orders 29 and 30 regarding “incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd”

Response: Accept

The Welsh Government should clarify:

- its interpretation of “within the legislative competence of the Senedd” in Standing Order 30A”

‘Within the legislative competence of the Senedd’ has its ordinary meaning by reference to the legislative competence tests in section 108A of the Government of Wales Act 2006 (“GoWA”).

- how its interpretation of Standing Order 30A compares with its interpretation of “for any purpose within the legislative competence of the Senedd” in Standing Order 29;

The wording in SO30A relates to amendments to primary legislation within legislative competence which, again, we would consider by reference to the wording of section 108A of GoWA. The wording in SO29 in speaking of a ‘purpose’ within legislative competence does not squarely align with the wording in section 108A of GoWA.

- whether it believes changing the functions of a reserved authority without consent is within legislative competence for the purposes of Standing Order 30A;

This will depend on the circumstances of each case, and in particular whether there is a provision of a UK statutory instrument which amends primary legislation within the legislative competence of the Senedd.

- to what extent does it rely on the carve-out in Standing Orders 29 and 30 regarding “incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd”

There is no record of provisions not considered to meet the requirements of Standing Orders.

I am copying this letter to the Chair of the Climate Change, Environment and Infrastructure Committee.

Yours sincerely,



Jeremy Miles AS/MS

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Cabinet Secretary for Economy, Energy and Welsh Language